

**COMMENTS ON ESTABLISHMENT OF ELECTRONIC REPORTING;  
ELECTRONIC RECORDS****DOCKET NUMBER EC-2000-007****SUBMITTED ELECTRONICALLY TO: docket.oeca@epa.gov****February 27, 2002**

**The State of North Dakota manages several delegated programs through primacy agreements with the EPA.**

Thank you for the opportunity to provide comments concerning EPA's proposed rule: Establishment Of Electronic Reporting; Electronic Records. This proposed rule is commonly referred to as Cross-Media Electronic Reporting and Recordkeeping Rule (CROMERRR).

The apparent purpose of CROMERRR is to allow voluntary electronic recordkeeping and submission of electronic documents to EPA. The EPA believes that in order to maintain trustworthy and reliable electronic records, the electronic record-retention system must:

1. records in a form that may not be altered without detection;
2. Ensure that electronic records are not altered throughout the retention period;
3. throughout the retention period;
4. Ensure that any record bearing an electronic signature contains the name, the date and time, and any information that explains the meaning affixed to the signature;
5. Ensure that electronic signatures affixed to a record cannot be compromised;
6. Use secure, computer-generated, time-stamped audit trails that automatically record the date and time of operator entries and actions that create, modify, or delete electronic records;
7. Ensure that electronic records are searchable and retrievable for reference and secondary uses throughout the retention period;
8. preserves the context, metadata, and audit trail. If necessary, ensure that complete records can be migrated to a new system including related metadata throughout the retention period;
9. Make computer systems, controls, and attendant documentation readily available for inspection. .

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In addition, a system used to receive electronic documents must have robust safeguards to prevent unauthorized access to the system or any electronic signature, provide for the detection of unauthorized access or attempted access to

the system or electronic signatures, provide safeguards to prevent modification of electronic records or signatures, prevent tampering of the system clock, and provide safeguards to prevent any other compromise of the system.

The provision to make CROMERRR a voluntary rule appears to evolve into a mandatory requirement when electronic recordkeeping requirements of an EPA administered environmental program are required to be maintained by an acceptable electronic record retention system as specified in this proposed rule. This amounts to an unfunded mandate.

The definition of an electronic record as any combination of text, graphics, data, audio, pictorial, or other information represented in digital form that is created, modified, maintained, archived, retrieved, or distributed by a computer system seems onerous in that a record generated by computer but archived in a paper format would not meet the apparent electronic record retention requirement. If a paper archive is preferred by an entity, it apparently would be required to retain the electronic record that was used to generate the paper copy. In today's business environment, computers are used extensively if not exclusively to maintain and/or generate all documents. The retention of all electronic records used to generate reports to the EPA for the required retention period would be burdensome, expensive, and inefficient. This does not appear to be "voluntary". In addition, the possibility also exists that the electronic format utilized to retain electronic records may not be supported for the entire retention period and transfer of these records to another format in such a manner that maintains the complete record and always in a readily readable format, may be very expensive, and in some instances, impossible. Therefore, meeting CROMERRR's requirements would mean either reverting entirely to paper records, which is impractical, or modifying existing electronic record keeping systems.

CROMERRR also indicates that EPA will inform any regulated company or other entity that maintains records addressed by this proposed rule under EPA regulations, when they can store records electronically. This apparently means that current electronic records and record retention systems utilized by state agencies or regulated companies that are used to report to the EPA are impermissible or unacceptable.

Not all current legacy systems can meet retention requirements such as the auditing requirement, and if they can, do not retain these audit records for an extended period of time such as five years, or longer in some instances. Requiring retention of all electronic records and the audit trail for an extended period would be expensive, time-consuming, and inefficient.

The development of a record retention plan, the training of appropriate personnel, the purchase of any necessary hardware/software, the cost of storing these electronic records for the specified timeframe, and managing of these electronic records would be expensive, time-consuming, and inefficient. In North Dakota, these costs may exceed or significantly impact the grant monies allocated to

agencies by the EPA for management of the delegated programs. The costs associated with the retention and management of electronic records pursuant to this proposed rule would be in the hundreds of thousands of dollars. The North Dakota Industrial Commission-Oil and Gas Division is currently implementing a Risk-Based-Data-Management-System (RBDMS) database through a cooperative effort between the state, the Ground Water Protection Council, and the Department Of Energy. An estimate by the contractor helping to install this database on the cost to upgrade to comply with CROMERRR is \$130,000 to \$160,000. EPA itself assumed approximately \$600,000 in software costs for licenses to enterprise commercial off-the-shelf electronic commerce program licenses, and another \$400,000 in labor to customize these systems to specific state requirements. This is a cost that North Dakota simply cannot afford. Additionally, it is unclear how the potentially enormous costs of implementing this proposed rule will provide a cost-effective increase in environmental protection.

Our agencies have spent, and will continue to spend, considerable time, money, and effort to develop and maintain electronic databases and to develop electronic data submission. Some of these efforts include development of Microsoft Excel® electronic forms for data submission. This effort would appear to be wasted since Excel does not contain an audit trail capability and these forms would not meet record retention requirements under CROMERRR. These monies and efforts would, in many instances, be wasted or extremely diminished.

It would appear that fraud in reporting to the EPA must be rampant based upon the fraud-prevention emphasis in this proposed rule. Historically, states and regulated companies have reported data to the EPA, previously exclusively with pen and paper documents, and more recently with electronic documents, even if it is used only to generate the paper copy. These documents could easily be altered. Is the incidence of fraud associated with previous reporting such that the migration to a truly electronic reporting and retention system necessitates this quantum leap in security and its associated costs? Is the incidence of fraud so prevalent that every entity that reports to the EPA should be subject to these burdensome requirements? It is already a crime to fraudulently report to an enforcement authority. If the incidence of fraud is not prevalent or excessive, less stringent electronic reporting and retention requirements would be adequate.

It appears that CROMERRR is a one-size-fits-all rule. Different reports have different security and sensitivity issues. A risk assessment and cost-benefit analysis on the need for such stringent anti-fraud provisions would probably indicate that CROMERRR's strong anti-fraud provisions are not necessary for all reporting and record keeping.

Our state agencies maintain a strong field presence and strive for good working relationships with our regulated community. Because of this relationship, we feel that fraud in reporting by our regulated community is extremely low or non-existent. Our state agencies have always strived to maintain a good working relationship with the EPA. Our state agencies and EPA have developed a

relationship of trust, which is reinforced through annual program reviews. This includes the current record management. Record management appears adequate now, therefore if this proposed rule is implemented, a means to "grandfather-in" systems and management of those systems is necessary.

EPA also assumed that companies were not currently keeping records electronically and that 0.5% of companies will find it cost-effective to implement. This is simply not the case. Companies have invested millions of dollars in proprietary databases to store electronic records and are currently reporting electronically or are ready to as soon as state agencies are ready to implement electronic reporting.

CROMERRR's affect on our state industries is of great concern. Electronic reporting is a service that state agencies are striving for and companies are clamoring for. The very prescriptive requirements for electronic reporting and record keeping would be very costly to companies that are required to report environmental data to our state agencies. EPA's own estimate, which may be severely underestimated, of a \$40,000 per facility cost and a \$17,000 per year operational cost to comply with the record keeping requirement, is a cost that would provide very little, if any, additional environmental protection. Some of the companies do not have the staff or monies to comply with CROMERRR. EPA also assigned neither costs nor savings to the group of mostly large companies that have existing electronic document systems that could use them for compliance reporting. As EPA has heard, the costs to some of these companies would be in the millions of dollars.

We are also concerned about the necessity to amend a state program to allow electronic reporting or record keeping. The idea of publishing for public comment the details of a state agency's computer security and archiving system is extremely troubling. Security needs dictate that this information not be widely disseminated. Changes in an agency's computer system may be frequent as technology evolves. Requiring a program amendment for every change would be burdensome and inefficient.

North Dakota is not currently, nor will it in the near future, implementing electronic reporting on a statewide basis. Our different agencies maintain separate databases and have different electronic reporting goals and needs. Also, these separate agencies have different security and document sensitivity issues.

The costs and time constraints associated with this proposed rule are too burdensome and will discourage implementation of electronic reporting and record retention systems.

EPA extended its comment period for 60 days to January 28, 2002 and again for 30 days to February 27, 2002 and scheduled two public meetings to gather comments on this proposed rule. It appears that EPA underestimated the controversy that this proposed rule would generate. We would therefore respectfully request that CROMERRR be withdrawn. This rule could be reintroduced at a later date after the EPA gathers input from program people at the regional, state, and

local government level along with input from industry.

Respectfully submitted,

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Attn: Docket Number EC-2000-007

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Attached as a WordPerfect 5.1/6.1/8 file are comments from the Administrative Staff of the Office of the Governor of North Dakota on the above subject proposed rule.

Sincerely,  
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